

1 Ali M. Taha
2 247 Dove Trl
3 Bradenton, FL 34212
4 Telephone: 941-896-3471
5 Email: alim_taha@yahoo.com

6 Power of Attorney for Plaintiffs
7 Mohamad E. Taha and Sanaa M. Yassin

FILED

MAR - 9 2018

**U.S. COURT OF
FEDERAL CLAIMS**

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

8
9 MOHAMAD E TAHA (DECEASED), AND
10 Sanaa M. Yassin, his wife

11 Plaintiffs

12 vs.

13
14 UNITED STATES ON BEHALF OF THE
15 INTERNAL REVENUE SERVICE

16 Defendants
17

**Case No.: 17-1174 T
Judge Charles F. Lettow**

**PLAINTIFFS' MOTION TO DENY OR
STRIKE DEFENDANT'S REPLY IN
SUPPORT OF ITS MOTION TO
DISMISS**

18
19 TO THE HONORABLE CHARLES F. LETTOW, UNITED STATES COURT OF
20 FEDERAL CLAIMS AND THE DEFENDANTS' OFFICE OF THE UNITED STATES
21 ATTORNEYS OF RECORD:

22 Plaintiffs Mohamad Taha (deceased in 2007) and his wife
23 Sanaa Yassin file this motion to respectfully request the Court
24 to deny or strike Defendant's Reply in Support of its Motion to
25 Dismiss on the basis of insufficient defense or any redundant,
26 immaterial, impertinent, or scandalous matter pursuant to RCFC
27

1 12(f).

2
3 Defendant, in its Reply in Support of its Motion to
4 Dismiss, repeated redundantly its exact allegations it detailed
5 in its Motion to Dismiss, without facts or evidence - mere
6 allegations; ignoring the facts presented in Plaintiffs'
7 Complaint and re-emphasized in their Objection to Defendant's
8 Motion to Dismiss.

9
10 Plaintiffs, therefore, were forced to re-emphasize the
11 facts in rebutting Defendant's meritless allegations, similar to
12 their correspondence with the IRS for over ten years.

13 **The Court is now due to take action and stop Defendant's**
14 **continued meritless motions, and grant Plaintiffs their rightful**
15 **claim for tax refund.**

16
17 **2002**

18 Defendant repeated that "the Court should dismiss
19 plaintiffs' claim as to 2002 for lack of subject matter
20 jurisdiction because plaintiffs failed to timely file their
21 suit. The IRS issued plaintiffs a notice of disallowance for
22 their 2002 tax year on December 20, 2007. (*Id.* at p. 4.)
23 Plaintiffs were, therefore, required to file suit by December
24 20, 2009. I.R.C. §6532. They did not. They filed suit on May 10,
25 2017. (*Id.* at 4...) Therefore, when plaintiffs opted to file an
26 appeal with the Appeals office, their deadline to file suit
27
28

1 remained December 20, 2009. Thus, the Court should dismiss
2 plaintiffs' claim as to 2002 for lack of subject matter
3 jurisdiction."
4

5 Plaintiffs responded to Defendant's above repeated
6 allegations and inaccuracies in their Objection to Defendant's
7 Motion to Dismiss, (¶6a, 7a, p. 15, ¶7b, p. 16) and, therefore,
8 not necessary to repeat and burden the Court, with one exception
9 worth noting and re-emphasizing:
10

11 1. Plaintiffs, in good faith, opted to file an appeal with
12 the Appeals Office, as recommended in the IRS's
13 disallowance letter, in lieu of filing suit. Suit was too
14 premature to file at the time when dialogue was
15 continuing, and therefore, was not practical. Plaintiffs
16 want to make sure that the IRS and Appeals understand the
17 refund claim was filed within the 7 years for business
18 bad debt, according to the Code. The IRS and Appeals
19 alleged the Claim was filed late according to the 3-year
20 statute of the Code. This period is not applicable to the
21 Claim for business bad debt. Appeals disallowed
22 Plaintiffs' claim, ignoring Plaintiffs' emphasis of the
23 7-year statute, and ignoring the preponderance of
24 evidence for the bad debt.
25
26

27 This dialogue continued, without interruption of
28

1 communications, with the IRS's six centers, over 60
2 letters, 33 IRS's responders, for over ten years in
3 continued communications - never out-rightly shut-down.
4

5 2. In addition, in lieu of this 2002 filing, Plaintiffs
6 opted to file their claim in the 2004 amended return for
7 tax refund for both years 2002 and 2003 within the 7-year
8 statute for business bad debt on the basis that Atek
9 Construction went out of business in 2004. This year was
10 considered fixed and determinable for the loss of
11 Plaintiff's shareholders income earned for 2002 and 2003
12 but not received or collected, and therefore, entitled
13 Plaintiffs for tax refund. Although Defendant dwelled on
14 2002 and 2003 claims, 2004 was the heart of the claim for
15 the loss of Plaintiffs' income and for tax refund, as
16 stated.
17
18

19 **2003**

20 Defendant repeated that "there are alternative grounds upon
21 which the Court should dismiss plaintiffs' claim for 2003 for
22 lack of subject matter jurisdiction. First, the IRS has no
23 record of receiving any administrative refund claim as required
24 by §7422. (D's Mt. at 9-10.) Defendant submitted a Form 4340,
25 Certificate of Assessment and Payment, for 2003, which does not
26 give any indication that plaintiffs filed a refund claim for
27 28

1 2003. IRS's records, such as Form 4340s, are presumed to be
2 true, accurate, and correct... However, plaintiffs did not
3 submit any evidence, such as a timely postmark or certified-mail
4 receipt, that would show that they mailed their administrative
5 refund claim in a timely manner... Because plaintiffs cannot
6 thus overcome the presumption of the regularity of the Form
7 4340, their claim as to 2003 should be dismissed."

8
9
10 Plaintiffs responded to Defendant's above allegations and
11 inaccuracies in their Objection to Defendant's Motion to
12 Dismiss, (¶8a, p. 16, 17, and contd. p. 18) and, therefore, not
13 necessary to repeat and burden the Court, with one exception
14 worth noting and re-emphasizing:

15
16 1. First, Plaintiffs did in fact file their administrative
17 refund claim, similar to every other claim for years 2002
18 and 2004, in compliance with §7422 and other rules.
19 (Compl., Compliance, p. 9, ¶1).

20 2. Defendant emphasis that the IRS's records, such as Form
21 4340s are presumed to be true, accurate and correct... is
22 mere presumption and not factual supported with evidence.
23
24 **The purpose of Form 4340, as certified, was to show that**
25 **the IRS in fact received the tax payments for 2003, as**
26 **reported in the original returns. That's it - no other**
27 **purpose such as whether refund claims were filed. Form**

1 4340 certification for 2002 showed no indication that
2 that the IRS received Plaintiffs' refund claim for 2002
3 either. That's not the purpose of Forms 4340. **The fact**
4 **remains that Plaintiffs' claim for tax refund for 2003**
5 **was filed and mailed simultaneously with 2002.** Therefore,
6 Defendant's query of evidence, such as a timely postmark
7 or certified-mail receipt, that would show Plaintiffs
8 mailed their administrative refund claim in a timely
9 manner..., especially after 10 years, is unrealistic and
10 mere avoidance of the truths. Tax refund claim for both
11 years were repeatedly brought up in Plaintiffs' letters
12 to the IRS, but still ignored. (Compl., Ltrs. No. 2 dated
13 1/21/08, No. 6 dated 9/24/09, and No. 8 dated 11/12/09,
14 Exh. C).

15
16
17
18 3. Plaintiffs question why Defendant chose to provide Form
19 4340, Certificate of Assessment and Payment, showing
20 minimum data in less than half a page for each of 2002
21 and 2003 tax payments, in lieu of providing the Court
22 with the original returns, Forms 1040 (Compl., Exh. A.)
23 Form 4340 in fact did not serve any purpose but to
24 certify that the IRS received Plaintiffs' tax payments.
25

26 4. Plaintiffs rebut Defendant's allegation that "Plaintiffs
27 do not offer any new facts or arguments that the
28

1 purported debt was business debt." This allegation was
2 not even mentioned above for 2002. Plaintiffs provided
3 evidence of the bad debt. Mr. Taha was not an "investor"
4 as Defendant alleged. He was part "owner" of the business
5 at 10% share on which he earned shareholder's income and
6 equity accordingly, and paid taxes accordingly as well,
7 and therefore, his loss of income is surely business bad
8 debt.
9

10
11 5. Plaintiffs further refer the Court to Items 1 and 2 under
12 paragraph titled 2002 above.

13 **2004**

14 Defendant alleged "As we explained in the motion,
15 plaintiffs' claim as to 2004 is not at issue. (D's Mt. at 1-2
16 n.1) Although plaintiffs allege that they are entitled to a
17 refund for 2004 in the amount of the taxes they paid in 2002 and
18 2003, they do not allege that they recieved any gross income in
19 2004 against which they could apply their claimed bad debt
20 deduction, or even made any payments for 2004. (Ps' Resp. ¶9a.)
21 Thus, plaintiffs do not and cannot allege any overpayment of tax
22 to recover for 2004. \$\$6511, 7422. The Court should dismiss
23 plaintiffs' claim as to 2004 for failure to state claim."
24

25
26 Here Defendant alleges that "plaintiffs' claim as to 2004
27 is not at issue." If that is the case, then Plaintiffs are
28

1 entitled for tax refund which is, therefore, not an issue. But
2 Defendant reverses its allegation to a contradictory conclusion
3 that plaintiffs did not have gross income in 2004... and thus,
4 do not and cannot allege any overpayment of tax to recover for
5 2004. In short, plaintiffs did have gross income for 2004 which
6 was negative gross income (loss). Refer to Form K-1 showing
7 negative income (loss) attached to Form 1040 for 2004 (Compl.,
8 Ltr. 13, Exh. E).

9
10
11 Plaintiffs further refer the Court to more detailed
12 response in regards to the 2004 claim in their Objection to
13 Defendant's Motion to Dismiss. (¶9a, p. 18, 19).

14 **Mr. Taha**

15 Defendant alleged "As we explained in our motion, Mr. Taha
16 does not have the capacity to sue because he died before
17 plaintiffs brought this suit. (D's Mt. at 13) ... See *Adelsberg*
18 *v. United States*, 58 Fed. Cl. 616 (2003)."

19
20 Defendant, in its conclusion, "requests that the Court
21 grant its motion to dismiss, filed January 29, 2018. More
22 specifically, the Court should grant the motion as to 2002
23 because plaintiffs failed to timely file their complaint.
24 Likewise, the Court should grant the motion to 2003 because
25 plaintiffs (on either of two grounds) failed to timely file an
26 administrative refund claim for 2003. Moreover, the Court should
27
28

1 grant the motion as to 2004 because plaintiffs did not receive
2 any income or pay any tax in that year, and thus, there is no
3 possible overpayment that could be determined as to that year.
4 Finally, in the event that the Court denies defendant's motion,
5 defendant requests the Court dismiss the decedent as a party
6 because he does not have the capacity to bring suit."

7
8 Before Plaintiffs submit their conclusion, they offer the
9 following rebuttal to Defendants above conclusion:
10

11 1. Not once, where Defendant or the IRS acknowledged that
12 Plaintiff Sanaa Yassin was Mr. Taha's wife. Defendant
13 referred to her as Mrs. Sanaa Yassin, instead of Mrs.
14 Taha, implying she is not a party of the suit. For
15 clarity purposes, even though Sanaa Yassin maintained her
16 maiden name in her marriage, she is still Mrs. Taha. They
17 both filed every original tax return and amended tax
18 return as "married filing jointly."
19

20 2. The reference to case *Adelsberg v. United States*
21 regarding "the capacity to bring suit, requires legal
22 existence at the time the suit is filed and not at the
23 time the return was filed."
24

25 Adelsberg's case cannot be applicable to Plaintiffs'
26 case, similar to Defendant's referenced cases *RHI v. U.S.*
27 (*D's Mt.*, ¶Argument, p. 6-7) in regards to the Court's
28

1 jurisdiction and Wagner v. Kemner (D's Mt., ¶B, p. 13) in
2 regards to capacity to sue.

3
4 RHI's case was related to "hot interest" that RHI paid
5 for corporate income tax underpayment after which RHI
6 sued to recover. Therefore, this case was irrelevant.

7 Wagner's case has to do with his lack of capacity to sue
8 because he had not been licensed to do business in
9 Illinois. No mention of decedents. Therefore, this case
10 was irrelevant.

11
12 Plaintiffs rebutted both RHI and Wagner's cases as
13 irrelevant or inapplicable (P's Obj., ¶2, p. 22, and Item
14 14a, p. 26-27, respectively). Plaintiffs' latter true
15 rebuttal was not brought up again by Defendant's Reply
16 filed February 26, 2018 because neither case was
17 relevant.

18
19 Defendant's repeated reference to Adelsberg's in its
20 Reply has been answered in Plaintiffs Objection to
21 Dismiss with a quote "The capacity doctrine relates to
22 the issue of a party's personal right to litigate in
23 federal courts (P's Obj., p. 26-27)." Specifically, the
24 reference to "legal existence to have the capacity to sue
25 and be sued" was related to plaintiff Wagner... as stated
26 above. Therefore, Defendant's argument for Adelsberg's
27

1 capacity to sue as a single decedent litigant cannot be
2 applicable. Plaintiffs, except Mr. Taha, are alive and
3 therefore, legally exist. Plaintiffs are not single
4 litigant or substituted. Mr. Taha was not the only single
5 individual litigant that can be related to Adelsberg's.
6 Plaintiffs action was indisputably filed by living and
7 still alive plaintiffs, and therefore, survive their
8 deaths.
9

10
11 3. "Finally," Defendant expressed inappropriate and
12 meritless argument, "in the event that the Court denies
13 Defendant's motion, defendant requests the Court dismiss
14 the decedent as a party because he does not have the
15 capacity to bring suit. It seems obvious that Defendant
16 failed to present any factual arguments or logic in its
17 actions to convince the Court of any substance, and
18 therefore, resorted to a mere imaginary hope and plea for
19 a rule in its favor. Plaintiffs are confident that the
20 legal system will prevail in their favor and the Court
21 will rightfully deny or strike Defendant's motions.
22
23

24 **Plaintiffs' Main Points and Conclusion**

25 1. Unlike Defendant's repeated allegations to the contrary,
26 the Court has subject matter jurisdiction over all
27
28

1 aspects of Plaintiffs' claim - rightly filed.

2 2. The Defendant's extensive allegations, ambiguities, and
3 meritless arguments to Plaintiffs' refund claim as
4 untimely filed is totally incorrect. Plaintiffs' claims
5 were filed within the 7-year statute of limitation for
6 business bad debt, as explained in detail in its over 30
7 letters as well as in the years' amended returns, 1040X.
8

9 3. Plaintiffs' Complaint is the heart of their action. It is
10 to be considered highly with diligent attention to every
11 detailed fact and supporting evidence contained within.
12

13 4. Plaintiffs endured, with good faith in the legal system,
14 over ten years of continued communications with the IRS
15 that included over 60 letters, 6 IRS Centers, and 33
16 IRS's responders, and obvious total confusion and
17 irresponsibility within the IRS. That caused the IRS's 33
18 responders total disarray for not directly responding to
19 Plaintiffs' letters. Their letters were all generalized
20 and duplicate that seem to have been pulled out of the
21 IRS's standard archives. Plaintiffs emphasized that their
22 refund claim was based on facts and preponderance of
23 evidence for the business bad debt.
24

25 5. Not once, where the IRS acknowledged Plaintiffs'
26 supporting evidence for the business bad debt that was
27
28

1 provided to the IRS multiple of times.

2
3 6. Not once, during the first 9 years of communications,
4 where the IRS acknowledged Plaintiffs' basis for the 7-
5 year statute of limitation until its letter dated March
6 22, 2016 when the IRS finally admitted that "The bad
7 debts statute of 7-years is correct-and the claim would
8 be worthy of reconsideration-if there had been actual bad
9 debt. (Compl., Ltr. 30, Exh. E). Plaintiffs emphasized
10 with evidence that there is actual debt that the IRS
11 ignored. Although the IRS acknowledged Plaintiffs'
12 assertion of the 7-year statute of limitation, Defendant
13 ignored this fact asserted by the IRS.
14

15
16 7. Further, the state of CA would not have refunded
17 Plaintiffs' claim for tax refund if it was not rightfully
18 claimed. Plaintiffs transmitted the same applicable
19 original and amended tax returns to the state of CA. CA
20 did refund Plaintiffs' claim for 2002, and 2003 on
21 10/31/2016 and 03/01/2016, respectively. Similarly, the
22 IRS and CA refunded other shareholders of Atek who
23 claimed tax refund on income that was lost (bad business
24 debt.) The government and the state cannot be
25 contradictory to Plaintiffs' action. Presumably, both
26
27
28

1 have similar or equal rules for the tax system.

2
3 8. Plaintiffs gracefully and rightfully request the Court to
4 deny Defendant's Motions and order judgment in favor of
5 Plaintiffs.

6 9. Plaintiffs pray for judgment for the amount of tax refund
7 claim of \$14,177.00 plus interest, penalties, and other
8 costs incurred in the course of prosecuting their claim.
9

10
11 Dated March 6, 2018



12 Ali M. Taha
13 Power of Attorney, CAF 0311-
14 0541R, for Plaintiffs Mohamad
15 Taha (deceased) and Sanaa
16 Yassin, wife
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

STATE OF FLORIDA, COUNTY OF MANATEE

I am over the age of 18 and not a party to the within action,
reside at 247 Dove Trl, Bradenton, FL 34212.

On March 6, 2018, I served the foregoing document described as:

PLANINTIFFS' OBJECTION TO DEFENDANT'S MOTION TO STAY

on all interested parties in this action by placing the true
copies thereof enclosed in sealed envelopes addressed as
follows:

(XX) BY MAIL: I caused such envelope(s) to be deposited in the
mail at Bradenton, FL. The envelope was mailed with postage
thereon fully prepaid to:

Elizabeth A. Kanyer, Esquire
U.S. Department of Justice
Court of Federal Claims Section
Post Office Box 26
Ben Franklin Station
Washington, DC 20044

Executed on March 6, 2018

I declare under penalty of perjury under the laws of the
United States of America the foregoing is true and correct.


Ali M. Taha